IN SENATE OF THE UNITED STATES.

MAY 22, 1828.

MR. BERRIEN MADE THE FOLLOWING REPORT:

The Select Committee, to whom was referred the memorial of sundry citizens of New Jersey, touching the election of Ephraim Bateman, a Senator from that State,

REPORT:

That, by a reference to the proceedings of the Legislature of New Jersey, assembled in joint meeting on the 9th November, 1826, of which a duly certified copy has been exhibited by the memorialists, it appears,

That an election for a Senator, to represent the said State of New Jersey in the Congress of the United States, for six years from the fourth day of March, then next ensuing, was on that day held;

That Theodore Frelinghuysen, Ephraim Bateman, Thomas Chapman, and George K. Drake, were put in nomination for the said appointment;

That Ephraim Bateman was at that time a member of the said Legislature of New Jersey, Vice-President of the Council, and Chairman of the joint meeting;

That the names of Thomas Chapman, and George K. Drake, were, with leave, respectively withdrawn;

That the said Ephraim Bateman thereafter withdrew from the chair of the joint meeting, and, at his instance, William B. Ewing, Esq. was called to the same; and, on motion, the same was confirmed by the joint meeting;

That, after some discussion as to the manner of proceeding, the said Ephraim Bateman returned to the assembly room, and resumed the chair;

That the Secretary was thereupon directed to call the joint meeting, which being done, the members voting viva voce, it appeared that there were for Theodore Frelinghuysen twenty-eight votes, and for Ephraim Bateman twenty-nine votes, and that the said Ephraim Bateman voted for himself, and was accordingly declared to be duly appointed.

It moreover appears to the Committee, that in virtue of such election, and the commission of the Governor of New Jersey founded thereon, the said Ephraim Bateman now holds his seat in the Senate of the United States.

The memorialists object to the validity of this election, because the said Ephraim Bateman, being a member of the Legislative Council, Vice-President of the State, and Chairman of the joint meeting of the two houses of the Legislature, permitted himself to be nominated as a candidate for the office of Senator in the Congress of the United States; that he presided as chairman of the joint meeting during the said election; that, before the vote was taken, he made a motion that he should be excused from voting, because he was a candidate, and therefore interested; and, on the question being put on his said motion, voted that he should not be excused, the other members of the joint meeting being equally divided on the same; and that, on the vote for Senator for six years, the joint meeting, without the vote of the said Ephraim Bateman, being again equally divided, he the said Ephraim Bateman voted for himself.

The transcript of the proceedings of the Legislature of New Jersey, which has been exhibited to the Committee, does not show what motions were made and decided before the joint meeting proceeded to the election of a Senator; but it does show, that on proceeding to that election, the votes of the joint meeting were for Theodore Frelinghuysen twenty-eight, and for Ephraim Bateman twenty-nine, and that Ephraim Bateman voted for himself. The question, therefore, which is presented to the consideration of the Committee, is, whether this act invalidates the election?

On the preliminary point which is discussed in the argument forwarded in behalf of the memorialists, as well as in that submitted by the respondent, and which relates to the right of the Senate to look behind the commission granted by the Governor, the Committee cannot permit themselves to entertain a doubt.

The Senate is empowered by the constitution to judge of the *elections, returns,* and qualifications of its members, and cannot therefore be precluded by the commission emanating from the executive of a State, from any inquiry which is necessary to the exercise of that judgment. If this were not so, the Governor of a State, by an abuse of his trust, either from misapprehension or design, might assume to himself the appointing power in exclusion of the legislature.

The question, whether the election of the respondent is invalidated by the fact that he voted for himself, and that without such vote he had not a majority of the votes of the joint meeting by which he was declared to be elected, is then forced upon the attention of the Committee.

The following clauses of the Constitution of the United States, relate to the *manner* of election:

"The Senate of the United States shall be composed of two Senators from each State, who *shall be chosen by the Legislature thereof.*"

"The times, places, and *manner* of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the place of choosing Senators.

The Legislature of New Jersey has enacted the following provision:

"Senators of the United States, on the part of this State, shall be appointed by the Council and General Assembly, in joint meeting assembled, at the place where the Legislature shall then sit."

It is manifest from the aforegoing clauses, that Congress may prescribe the *mode* of electing Senators, and that in the absence of any provision by them, it is competent to the Legislatures of the several States to do so. It seems equally clear, that each State must possess the power of defining, by its organic law, the constituents of its own legislative department, of prescribing the qualifications of its members, and the limitations under which the trust confided to them shall be exercised; and that the interest of a member in any subject of legislative action, may be declared to constitute, as to that subject, a ground of disqualification to the exercise of his legislative functions, by such interested member. But no such provision exists. For aught that appears to the Committee, the respondent was a member of the Legislature of New Jersey, duly elected, and competent to the exercise of every legislative power not forbidden by its laws, among which the right to vote in the election of a Senator was one. The Committee have not considered the question of the propriety or delicacy of the act complained of by the memorialists, as coming within the scope of the reference made to them by the Senate. Nor have they felt themselves at liberty to apply to this question any abstract principles of right, or of that system of jurisprudence, which, however its principles may have become intermingled with our statutory regulations, or its rules of proceeding, may be seen to operate in the forms which are in use in our judicial tribunals, has no intrinsic validity in those tribunals, or in any other forum in the United States.

Contenting themselves with this brief view of the subject, it appears to the Committee that the facts set forth in the memorial referred to them, are not sufficient to invalidate the election of Ephraim Bateman, as a Senator of the State of New Jersey, in the Congress of the United States, under the election had in the joint meeting of the Assembly of that State, on the 9th day of November, 1826. They therefore recommend the following resolution:

Resolved, That the Select Committee raised on the remonstrance and petition of sundry citizens of the State of New Jersey, be discharged from the further consideration of the same.

No. 1.

Remonstrance of a number of the members of the Legislature of New Jersey, and of a number of citizens, against the legality of the election by the Legislature, of Ephraim Bateman, to the Senate of the United States.

To the Honorable the Senate of the United States.

The remonstrance and petition of the undersigned citizens of the State of New Jersey,

SHEWETH:

That your petitioners, in common with a large portion of the freemen of New Jersey, are much dissatisfied with the election of a Senator of the United States for this State, from and after the fourth day of March next, for six years; and humbly submit to the Senate, that the alleged election of Ephraim Bateman to that office, is, and ought to be, declared by your honorable body, to be null and void, for the following reasons:

1. That the said Ephraim Bateman, being a member of the Legislative Council, Vice-President of the State, and Chairman of the joint meeting of the two Houses of the Legislature, to whom it belonged to elect a Senator, permitted himself to be nominated as a candidate for the said office. When the election came on, he presided as chairman of the joint meeting. Before the vote was taken, he, the said candidate, made a motion that he should be excused from voting, because he was a candidate, and therefore interested; but when the vote was taken on his said motion, he himself voted that he should *not* be excused, the other members of the joint meeting being equally divided; to wit, twenty-eight members voting in the affirmative, and twenty-eight in the negative.

2. On the vote for Senator for six years from the fourth day of March next, the joint meeting, without the vote of the said E. Bateman, were again equally divided, to wit: twenty-eight members voting for Theodore Frelinghuysen, and twenty-eight for the said Ephraim Bateman. But the said Bateman voted for himself, and thereby there were twenty-nine votes for him, and he as Chairman of the joint meeting, declared that he himself was duly elected. He afterwards presented to the Governor a certificate from the Clerk of the joint meeting, that he was elected; and the said Governor thereupon gave the said E. Bateman a commission, in the usual course of executive duty.

Your petitioners respectfully state, that there is no statute of the State of New Jersey, nor any rule of the said joint meeting, to warrant this proceeding, within their knowledge or belief; and they humbly submit to your honorable body, that it is repugnant to the fundamental principles of our free institutions, that the same man, at the same time, should be both *candidate* and *elector*. But that he should, as in this case, be elected to an office of such high dignity and importance by *his own* vote, without which he neither could nor would

have been elected—outrages every rule of law, of equity, and propriety, as your petitioners, with great deference to the Senate, allege and believe.

Your petitioners therefore object to the legality of the said election, and humbly pray that this their objection may be considered and decided on by your honorable body.

Your petitioners add to this their petition, sundry documents, verifying the facts above stated; that is to say,

1. An original protest, made and signed by a number of members of the said joint meeting at the time.

2. A copy of the minutes of the joint meeting in relation to said election.

3. Two of the public papers printed at the time, giving an account of these proceedings.

Your petitioners will take the liberty further to add, that in making this objection, they are not influenced by any hostility, private or political, against the individual claiming the office; but have been induced to present it to the Senate, from a principle of public duty, and a desire to promote the purity of elections, and the honor of the State.

The facts which they have stated, are well known to the claiming member, to be true, and are of public notoriety. Your petitioners therefore feel confident, that they will not be denied by that gentleman. If further proof is required, your petitioners will furnish it, as your honorable body may direct.

William Duryee,	Robert Boggs,
R. Voorhees,	Aug. R. Taylor,
Joseph Bullock,	John Neilson,
J. J. Wilson,	Staats Van Duersen
Samuel J. Bayard,	John Terhune,
Henry Clow,	A. S. Neilson,
J. G. Ferguson,	James S. Nevins,
John L. Thompson,	Frederick Richmond,
John Joline,	Charles Steadman,
John R. Thomson,	Peter Voorhees,
John Gulick,	Samuel Bayard,
Daniel C. Croxall,	Ebenezer Stockton,
Samuel R. Hamilton,	Joseph H. Vancleve.
Charles M. Wells,	

Samuel J. Bayard, of Somerset county, State of New Jersey, being duly sworn, deposeth and saith, that he saw the foregoing names subscribed by the several persons whose names are set unto the above-written remonstrance to the election of Ephraim Bateman, as Senator of the said State; that they are citizens of the said State, and resident therein.

SAMUEL J. BAYARD.

Sworn and subscribed at Trenton, the 21st February, 1827, before the subscriber, Chief Justice of the Supreme Court of Judicature of the State of New Jersey.

CHARLES EWING.

No. 2.

Protest of Members of the Legislature of the State of New Jersey against the election of Ephraim Bateman.

We, the undersigned, members of the Legislative Council and General Assembly of New Jersey, in joint meeting convened, being of opinion that no member of this joint meeting has a right to vote on any question in which his private interest is concerned, inasmuch as it is inconsistent with immemorial usage, and repugnant to the fundamental principle of the social compact, do hereby declare, that, in our judgments, Ephraim Bateman has not been duly appointed to the office of Senator of the United States, for six years, from the fourth day of March next, by this joint meeting; because the said Ephraim Bateman voted for himself for the said office, and thereby received a majority of the votes of the joint meeting, when, without his own vote, he would not have obtained such majority. We do, therefore, protest against the said proceedings and appointment.

ASSEMBLY ROOM, *Nov.* 10, 1826.

A. Howell,	Thos. C. Ryerson,
Charles Board,	Jno Moore White,
Silas Condit,	Silas Cook,
	Members of Council.
Stephen Day,	James S. Green,
William Stites,	P. D. Vroom, Jr.
Amzi Dodd,	John T. Woodhull,
Asa C. Dunham,	A. Robertson,
John D. Jackson,	Jos. Chandler,
Joseph Dickerson, Jr.	Hiram Munson,
Ephraim Marsh,	F. Van Blarcom,
	Members of Assembly.

STATE OF NEW JERSEY, *Borough of Princeton,* } ss.

James S. Green, of the said borough, being duly sworn, according to law, doth depose and say, that he subscribed the foregoing paper in the nature of a protest; that the names preceding his signature were subscribed when he signed the same; that he is acquainted with the handwriting of P. D. Vroom, John T. Woodhull, Asa C. Dunham, Amzi

Dodd, and Andrew Howell, and that he believes the names subscribed to the foregoing is in their true hand-writing ; that the persons whose names are subscribed were members of the Legislative Council, or General Assembly, at the time the paper bears date ; that the paper was drawn up, and is in the hand-writing of Amzi Dodd, member of the Assembly, from the county of Essex; and he believes it to be the original protest signed by the members.

JAMES S. GREEN.

Taken, subscribed, and sworn, before me, this 19th day of February, 1827. In testimony of which, I have hereunto affixed the seal of said borough, the day and year aforesaid.

R. VOORHEES, *Mayor.*

No. 3.

Proceedings of the Joint Meeting of the Legislature of the State of New Jersey.

IN JOINT MEETING, *November* 9, 1826.

Election for Senator for six years from the 4th of March next.

Theodore Frelinghuysen, Ephraim Bateman, (Vice-President,) Thomas Chapman, and George K. Drake, being on nomination, the names of Messrs. Chapman and Drake, with leave, were respectively withdrawn.

The Vice-President then withdrew from the chair, and, at his instance, William B. Ewing, Esquire, took the same.

Whereupon, a member of the joint meeting objected to the procedure, as being incorrect. After some desultory conversation, a motion was made that Dr. Ewing be chairman, which was carried nem con.

After several motions made on the manner of proceeding; and considerable altercation, attended with some warmth amongst the friends of the opposing candidates, the Vice-President returned to the Assembly room; whereupon, Mr. Ewing left the chair, and the Vice-President resumed the same.

The Secretary was then directed to call the joint meeting, which being performed, the result was as follows:

FOR MR. FRELINGHUYSEN.

Messrs.	Board,	Howell,	Ryerson,
	Condit,	Newbold,	Van Winkle,
	McChesney,	White,	Van Blarcom,
	Polhemus,	S. Cook.	Dodd.

Messrs.	Stites,	Stryker,	Jackson,
	Day,	Vroom,	Chandler,
	McDowell,	Dunham,	Munson,
	Woodhull,	*Speaker* (Drake)	Robertson...29
	Lloyd,	Dickerson,	
	Green,	Marsh,	

FOR EPHRAIM BATEMAN.

Messrs.	Clawson,	Conover,	Freas,
	Swain,	Mott,	Townsend,
	Maxwell,	Earle,	Capner,
V. P.	(E. Bateman,)	Toy,	Clifford,
Messrs.	Maekey,	Emlay,	Barton,
	Kinsey,	Lake,	Ewing,
	Christie,	French,	Foster,
	J. Cook,	Bee,	Seeley,
	Dunn,	Humphreys,	Armstrong..29
	West,	Archer,	

Whereupon, it appeared that Ephraim Bateman had a constitutional majority; he was accordingly declared to be duly appointed.

I, Daniel Coleman, Secretary of the Joint Meeting, certify the foregoing to be a true transcript from the minutes of the said Joint Meeting, held in the Assembly room, on the 9th day of November, 1826.

DAN'L. COLEMAN.

Samuel J. Bayard, of Somerset county, State of New Jersey, being duly sworn, deposeth and saith, that the name of Daniel Coleman, subscribed to the above certificate, is the proper hand-writing of the said Daniel Coleman, who was Secretary of the Joint Meeting; and that the said Daniel Coleman subscribed his name in the presence of this deponent to the said certificate of the proceedings of the Joint Meeting of the Legislature of New Jersey, held on the ninth day of November, eighteen hundred and twenty-six.

SAMUEL J. BAYARD.

Sworn and subscribed, at Trenton, the 21st February, 1827, before the subscriber, Chief Justice of the Supreme Court of Judicature of the State of New Jersey.

CHARLES EWING.

No. 4.

Letter from certain citizens of New Jersey, to the Hon. J. H. Eaton, relative to a remonstrance against the election of the Hon. E. Bateman, as Senator from New Jersey.

PRINCETON, (N. J.) *April* 25, 1828.

To the Hon. JOHN H. EATON.

SIR: The subscribers, together with other their fellow citizens, addressed, during the last session of Congress, a remonstrance to the

Senate of the United States, against the legality of the election of Ephraim Bateman as Senator from the State of New Jersey, of which the subscribers are citizens. That remonstrance, together with a protest, which accompanied it, the other Senator from New Jersey has declined bringing before the consideration of the Senate. Our only resort, therefore, is to the courtesy of the Senators of a sister State, to obtain a hearing of our just complaints, and the settlement of a constitutional question which we consider eminently serious and important.

We have assurance, in your known liberality of sentiment, of an acceptable medium through which our application to the Honorable Body of which you are a member, may receive that attention which its nature and merits deserve. That so respectable a portion of the citizens of New Jersey, as those constituted, who have appealed to the Senate as sole arbiter of their rights with respect to their representation, will be insulted by neglect, they are unwilling to believe. We therefore, respectfully and confidently, apply to you, Sir, and desire that, if compatible with your sense of duty, (which we are apprized you consider it to be,) you will before the adjournment of Congress call the attention of the Senate of the United States to the subject matter of the remonstrance and protest, before referred to, that such disposition may be made of them as the Senate in its wisdom may approve.

We remain, with sentiments of the highest respect,

Your obedient servants,

JOHN GULICK,
JOHN R. THOMPSON,
JOSEPH BULLOCK,
SAMUEL J. BAYARD,
J. G. FERGUSON,
CHARLES STEADMAN.

(No. 5.)

STATEMENT OF FACTS.

Ephraim Bateman, Vice-President of Council, was presiding officer of the joint meeting of the two Houses of the Legislature of New Jersey, when an election of Senator, for six years from the 4th of March, 1827, was attempted. Before the names of the members were called, for the purpose of recording their votes, viva voce, Mr. Bateman had retired from his seat, on the alleged ground of the indelicacy of his being present, he being a candidate. When, however, it was found that a tie was likely to take place, he returned, and resumed his seat as presiding officer. When his name was called, in order to vote, (himself and Mr. Frelinghuysen being the only candidates,) he requested to be excused. The vote on this question was equal; when he gave the casting vote, and thereby decided that he should *not be excused*,

contrary to his own request. He then voted for himself, and effected his own election by a majority of *one*, that being his own vote; thus converting an *equality* into a *majority*. The votes in joint meeting were, therefore, recorded thus: 28 for Mr. Frelinghuysen, and 29 (including his own vote) for Mr. Bateman. A reference to the journal accompanying this document will verify these facts.

Two points are to be elucidated: 1st. Whether the Senate can look behind the commission of the Governor?

2d. Whether a candidate for the Senate, being a member of the State Legislature, has not a right to *vote for himself?*

1. If the elective franchise, as exercised by the people at large, should be kept pure—if every inducement which can operate on our minds should induce us to guard its exercise from improper influence and corruption, and even the suspicion of it—if it should be considered the palladium of our liberties—so, likewise, a regard for the present UNION, the purity, and perpetuity of our great and advancing republic, should, by motives not the less imperious, counsel and direct us to protect from the same evils the franchise secured to the *States*, of electing the members of one of the branches of a co-ordinate department of the general government. The government is yet in its infancy, and the evil principles now adopted, will, as we advance, become more felt and more injurious. Like the weight attached to the lever, the farther it is removed from the fulcrum; so evil principles in governments become more potent in weight as they recede from the era of their first institution. It is therefore better, in establishing the qualifications of those who elect the Senators of the United States, that we should err on the side of too much rigor and severity, rather than on the side of looseness and liberality.

The Senate have, in several instances, *looked behind the commission of the Governor:* 1st. In the case of Mr. Gallatin, 1796 and '7. He was excluded after the presentation of his credentials. 2d. In the case of Mr. Tracy, of Connecticut, in 1801. He was only allowed his seat by a majority of three, the votes in the Senate standing 13 to 10. Mr. Lanman's case, in 1826, was decided adversely to his claim, by the vote of 23 to 18. So much for precedent.

As to the general principle. Under this head it may be said, unless the Senate should exercise this power, the provision of the Constitution respecting the qualifications of Senators would be futile. It would be permitting the *State Legislature*, and not the *Senate*, (though expressly authorized by the Constitution,) to be the exclusive judges of the qualifications of the Senators of the United States. (See art. 1st, sec. v. of the Constitution.)

2d. Whether a candidate for the Senate, being a member of the State Legislature, has not a right to vote for himself? Let us first consider the broad question, whether a man, claiming the exercise of the elective franchise, in the usual and more general acceptation of the term, *has a right to vote for himself?* Should this question be determined in the negative, it will follow, of course, that a member of the Legislature has no right to vote for himself when a candidate for Senator: for, *omne minus in se major continet.* Yet, should it *not* be determined in the

negative, the proposition which we have placed as No. 2, may, nevertheless, be decided in the negative; for the nature and organization and appropriate laws of parliamentary bodies, we maintain, justify such a conclusion.

A man may not vote for himself,

1st. On the ground of his being *interested* in the event. It may be said, if you disqualify a man from *voting for himself* on this ground, you must disqualify him from voting for *another*, when his interest is involved in the election. We admit the truth of the inference, but we answer, the *argumentum inconvenienti* must compel a constitutionalist not to extend the practical disqualification further than the case of *a man's voting for himself.* In such a case, the *interest* is not only *prima facie*, but undeniable. No one can deny, when a man *votes for himself*, that he votes according to the dictates of his interests. And why should a man be disqualified in such a case? For the same reason that interest disqualifies a man as a judge or a juror. He is to be esteemed as not possessing a free will. His interest deprives him of any will but in implicit obedience to its suggestions.

The exclusion of women and of minors from the exercise of the elective franchise, is chiefly rested on the ground of their not being *free agents.* (1 Blackstone, 170.) He says: "The true reason for requiring any qualifications with regard to property in voters, is to exclude such persons as are in so mean a situation that they are esteemed *to have no will of their own.*"

2d. From the nature of the duties of voting, a man should be disqualified from voting for himself. The duty of voting resembles that of a judge or umpire. The interests of a man's *country* may here be considered as the *law*, and the candidates for election the *parties.* Between them the voter is to judge, arbitrate, and decide. If he be a *party*, he is incompetent to judge, arbitrate, or decide impartially. His *own* interest, and not that of his *country*, is the rule of his conduct.

3d. The incompatibility of being a voter and votee at the same time. The first is the giver, the second the recipient. Is not an absurdity involved in their union in one person? Can a man give to himself that which is his already, or receive from himself that which he possesses?

4th. In establishing the rule that a man may vote for himself. It may be proper to consider the *expediency* of such a rule, politically, as well as morally; and which, there can be little doubt, is against so indelicate a practice.

We have, thus far, only considered the *general question*, whether a man *may not vote for himself?* We now come to the question, whether a candidate for the Senate, being a member of a State Legislature, may of right vote for himself?

An objection, at the outset, to the negative of this question, requires attention. It may be said, a man in the circumstances supposed ought to vote for himself: because, should he not, his constituents are deprived of his voice in the election. If it be wrong for a member of a parliamentary body to vote for himself, the objection has no validity. The loss of his voice is an incidental evil, which must happen, to pre-

vent the happening of a greater. But, independently of the general principle, it can be shown that there is no force in the objection. The Senate of the United States embodies the federative principles of our Constitution. A Senator is the representative of a State. Those who formed the Constitution acted for the States as well as for the People. And it is in the Senate only that the States, as such, are practically recognised in their influence on our system. Those, therefore, who elect a Senator, vote not as representatives of any portion of the people, but as *component members* of that part of the State sovereignty in which is vested, by the Constitution, (the joint production of the States and the People,) the power of appointing Senators, viz; *the legislative department*: the people, as constituents, are here, according to the true theory of the Federal Constitution, lost sight of. It is the metaphysical and political character of a State, or integral sovereignty, as a part of the federal system, which must, in the election of a Senator, be alone considered. When the member of a legislative body of one of the States, therefore, votes for a Senator of the United States, he votes not as the representative of his primary constituents, but, *pro hac vice*, as a member of that department of the State sovereignty in which is vested the power of appointment. *The State is his constituent.* The spirit and intention of the Constitution would justify his consulting solely the State policy and State views, independently of popular sentiment.

Thus, therefore, if our argument is correct, the constituents, who send a member to the State Legislature have no right to complain if he should not vote for himself, and thereby deprive them of any influence in the election: because, being not his constituents *pro hac vice*, they have no right to control his voice in any way, much less to dictate his course, or peremptorily command his vote. If they should be esteemed to have this control over members of the Legislature in the election of Senators, then is our government a *Representative Democracy*, and not a *Federal Republic*—which is not the truth.

There is, therefore, no force in the objection, that, by a member of the Legislature *not voting for himself*, his constituents are deprived of his voice in the election.

We now come to the question, *Has a member of a Legislature, being a candidate for Senator of the United States, a right to vote for himself?* All the general principles which we have advanced on the 1st, 2d, 3d, and 4th points of the question, *whether a man may vote for himself?* are here applicable, and need not be recapitulated. But, in addition to these principles, we have positive law and recognised precepts, which must be conclusive upon the Senate. The Lex Senatus, as found in Mr. Jefferson's Manual, is repugnant to the right in question. Mr. Jefferson says: "No member may be present when a bill or any business concerning himself is debating, nor is any member to speak to the merits until he withdraws." "When the private interests of a member are concerned in a bill or question, he is to withdraw; and when such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the law

of decency, but *to the fundamental principle of the social compact*, which denies to any man to be a judge in his own case, it is for the honor of the Senate that this rule of immemorial observance should be strictly adhered to."* But it may be said, although these principles are obligatory on the Senate, they may be rendered *null* by the peculiar rules and usages of the New Jersey Legislature.

We answer, the *principles* we have adduced, are universally applicable to all deliberative bodies; and all proceedings in violence to them must be void. 1st Blackstone, 91, tells us, that even the omnipotence of the British Parliament cannot constitute a man a judge in his own cause. When the Constitution of the United States vested the election of the Senators in the deliberative bodies, denominated the Legislatures of the different States, the mode of proceeding by them was known and settled, consistently with these principles. Should the members of a State Legislature, less than a quorum, or less than a majority, cause to be returned a person as Senator, their proceedings most unquestionably would be subject to the examination of the Senate. And why? Because they would be inconsistent with those inviolable and universal laws which govern the proceedings of deliberative bodies, and *which were known to exist by the framers of the Constitution.* 1st Blackstone, 91, says, that acts of parliament, out of which there "arise, collaterally, any absurd consequences, manifestly contradictory to common reason, are void." If this be the common law, when the acts of the British Parliament, unlimited by any Constitution, are spoken of, with what "*common reason*" can it be pretended that a Jersey Legislature (the Constitution by which it exists expressly recognising the common law) have the power to constitute a man a judge in his own cause—at once an *elector* and a *candidate?* But this they have not done.

This case may then be summed up shortly thus:

1st. The Senate is the exclusive judges of the *qualifications* of its own members.

2d. To be *duly qualified* a man must be duly elected.

3d. None can be duly elected but by a *majority* of *competent* votes.

4th. The Governor of New Jersey acts merely ministerially in giving a commission, which is a matter of course, on the certificate of the clerk of the joint meeting.

5th. The vote being *viva voce*, the Senate have the same means of getting at the fact as the Legislature had.

6th. A member of the Legislature cannot vote for himself; he cannot unite in his own person the inconsistent characters of voter and votee.

7th. The right claimed of voting for one's self, when without it there is no majority, is repugnant to the first principles of law, reason, and justice, and is void on general principles, standing in need of no prohibition; and cannot be supported by any rule or order of the

* The page I do not recollect, but these extracts will be found in the Manual.

body voting, who are bound to act correctly—yet no order to this effect was made in this case.

8th. If the State, or a county, lose a vote by such exclusion, it is produced by the incorrect act of the member of the Legislature, in setting himself up as a candidate for an office in their gift. By such an act he disables himself from voting, and ought to be held accountable to his constituents for the consequences. This practice is of pernicious tendency, operating at once to the injury of the Senate, by introducing into it inefficient men; and also of the State, by substituting a system of intrigue and bargaining for office, in the place of independent legislation, and is therefore not to be encouraged.

It must be admitted by Dr. Bateman, that there is no statute, rule, or order of the Legislature of New Jersey, authorizing a man, much less a member of a deliberative assembly, to vote for himself. The question must, therefore, be decided by general principles. If it is held that the Legislature's *permitting* his vote is conclusive, we will merely direct the attention of those who may question the omnipotence of legislative action, to the doctrine of the English lawyer respecting the supremacy of Parliament.

Lord Coke, in Bonham's case, 8 Co. 118, says, that common law *doth* control acts of Parliament, and adjudges them void when against common right or reason

So, in Day vs. Savage, Hobart 87: Chief Justice Hobart insists that an act of Parliament against natural equity, as *to make a man a judge in his own case*, was void. Lord Chief Justice Holt, in the case of the City of London against Wood, declared that the above cited opinion of Lord Coke was not extravagant, but a very reasonable and true saying. 12 Modern Rep. 687.

The dicta of Blackstone and Christian ought not to weigh against the above series of learned opinions. See 1 Kent's Commentaries, 420.

The Supreme Court of South Carolina, 1792, set aside an act of the Colonial Legislature, as being against common right and magna charta. This was not a question arising under the State Constitution, "but the Court proceeded upon those great fundamental principles, (says Chancellor Kent,) which support all government, and which have been supposed by many Judges in England, to be sufficient to check and control the regulations of an act of Parliament." 1 Bay, Rep. 252. 1 Kent's Commentaries, 423.

No. 6.

Answer of Hon. E. Bateman to a protest of several members of the Joint Meeting of the Legislature of New Jersey against the legality of his election as a Senator from that State.

To the Senate of the United States.

The undersigned, in pursuance of what he considers due not only to himself, but also to the rights and the will of the people of New Jersey, as he believes, constitutionally expressed, respectfully asks the attention of the Senate to his answer to the *Protest* of several members of the joint meeting by which he was elected, and the *Remonstrance* of sundry citizens of said State, to the like effect, by which the legality of his election as a Senator for six years from the 3d day of March, 1827, has been called in question.

The objection is based on the allegation that the undersigned, being a member of the Legislature, gave his vote in such a way as to secure to himself a majority of all the votes given in; and that in consequence of such vote, he was declared duly elected, and commissioned by the Governor of the State accordingly. That this vote was illegal, because the undersigned had a private interest in the election.

In order to test the validity of this exception, the undersigned refers to the Constitution of the United States, which contains the following provisions respecting the election returns and qualifications of members of the Senate.

"The Senate of the United shall be composed of two members from each State, chosen by the Legislature thereof, for six years."

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State, by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators."

"No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen."

"Each House (of Congress) shall be the judge of the elections, returns, and qualifications of its own members."

The foregoing extracts are the only provisions of the Constitution which have any bearing on the question.

The Legislature of New Jersey, conceding, of course, the paramount authority of the Constitution, have consequently merely followed its terms, by enacting, "That Senators of the United States, on the part of this State, shall be appointed by the Council and General Assembly, in joint meeting assembled, at the place where the Legislature shall then sit."

The term *Legislature*, necessarily includes the individual members of which it is composed; all of whom, and none other, are entitled to vote. The Constitution in no respect limits or qualifies this right, and

a State, acting subordinately to its higher authority, could not, if so disposed, abridge it.

The State of New Jersey has never attempted to do it.

The undersigned, therefore, being a member of the Legislature at the time of the election, had as perfect a right to vote as any other member—and representing the whole people of one of the counties in the State, in the Legislative Council thereof, his constituents were competent, through him, to demand an expression of their will. That the vote given was coincident with that will, has never been questioned.

The Constitutional qualifications not having been disputed, no remarks with reference to that point are required. The Senate will, no doubt, entertain and decide upon objections of that sort, whenever they are presented.

Each House is constituted the judge of the election and returns of its own members. As this provision is common to the two Houses of Congress, it will not be inappropriate to advert to the practical exposition which has been given to the power, by the House of Representatives, where the prerogative has been often exercised.

By an examination of the decisions of the House on the contested elections which have from time to time been subjected to its adjudication, it will appear that the nature and extent of this supervisory power is deemed to consist in an inquiry whether the requisitions of the Constitution, as applicable to the election of its members, have been complied with.

It is stipulated by the Constitution that the members of the House of Representatives shall be chosen every second year, by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature. But the times, places, and manner of holding the election, is prescribed in each State, by the Legislature thereof.

As the number of the electors having a right to vote for members of the House is indefinite, and the legal qualifications of those who present themselves for the purpose often uncertain, and sometimes determined with difficulty; and as the statutory regulations by which the elections are controlled, and the results ascertained, are various, subject to frequent change, and not always well understood, it is not matter of surprise, that errors are occasionally committed by the reception of illegal, or the rejection of legal votes; or negligences or informalities in the returns by the officers of the elections, so as to produce an unfair or incorrect general result. In such case the House will apply its corrective power, so as to carry into effect the intentions of the Constitution.

In the election of Senators, however, similar mistakes are scarcely possible. The number, names, and persons of the electors being known, it is incredible that an unauthorized vote should be given. The election is always held when the Legislature is in session; and, being public and notorious, should any illegality by possibility occur in the manner of its conduct or consummation, it could not fail to be immediately noticed. In such an event, the executive commissioning power of the State would doubtless withhold its sanction.

It is, therefore, respectfully submitted, whether a commission by the executive authority of the State ought not to be considered conclusive as to the constitutional character of the election—leaving, of course, the Senate at liberty to decide upon the constitutional competency of the person returned, to become a member of its body. This suggestion is made from respect to principle, and not on account of any repugnance to an inquiry into the legality of the election, should the Senate deem it proper to institute it.

The intimation that the undersigned had a private pecuniary interest in the election, it is presumed, requires no other reply than a mere reference to the principle which settles the compensation of members of Congress. It is to all intents and purposes an arrangement of equivalent. The pay awarded by law, is in satisfaction for services performed. As the transaction objected to, is admitted to be unusual, though it is believed not without precedent, certainly not so as it respects other officers elected by the Legislature of New Jersey in joint meeting, the undersigned hopes to be excused for adverting to some of the prominent circumstances which characterized the election.

New Jersey was originally divided by a proprietary line, running from South to North, into two not very unequal parts, denominated East and West Jersey. This distinction is still preserved; and, although there is no positive conflict of interests between these separate portions of the State, yet, as the people of the East transact their commercial business and have their exchanges principally with the city of New York; whilst the similar transactions of the West are with Philadelphia, and the ports and places on the Delaware, a kind of ambitious rivalry, harmless and pacific in its character, has been induced, and has had the effect of distributing equitably the officers created by the Legislative Joint Meeting.

By general consent, this reasonable arrangement has been recognised and respected, and in no case more scrupulously than in the choice of Senators.

It was the attempt, at the late election, to infract this long established and cherished usage, which produced the almost unanimous requisition of the western members of the joint meeting, upon the undersigned, not to permit any considerations of delicacy to prevent the bestowment of his vote in such direction as to preserve this usage. The acquiescence of the undersigned has been generally approved by his friends, and was then, and is still believed, under the aspect by which the case was presented, to have been expedient and justifiable, if not required by the obligations of imperious duty to the equitable interests of the western part of the State.

There are statements in the remonstrance of the complaining citizens, which, though not material to the main question, are nevertheless unjust, because not true. The undersigned is represented to have voted against his own request to be excused from voting on the election. The request being for personal indulgence, it was submitted to the decision of his associates, and so declared at the time. The vote on the question being 28 to 28, the motion was as effectually lost, as if

by an act of supererogation a casting vote had been thrown into the negative scale. The protesting members of the joint meeting thus understood it, and therefore refrained from making such a charge.

It is also stated in the remonstrance, that the undersigned presented to the Governor a certificate from the Clerk of the joint meeting, that he was elected, and the said Governor thereupon gave him (the undersigned,) a commission, in the usual course of Executive duty. This statement the undersigned avers to be wholly untrue; he never saw any certificate of his election by the Clerk (Secretary) of the joint meeting, never made any application to the Governor for a commission, or held any conversation with him in relation to it, previous to its issue.

These mistakes are adverted to for the purpose of showing how careless of the correctness of the facts they undertook to allege, were the remonstrants, in making up their statements.

If any consider the character of the transaction on the part of the undersigned as evincive of an overweening anxiety for an election, they are mistaken. Until he was designated by a very flattering unanimity of the West Jersey members, as their candidate, no urgent desire in relation to it was entertained by him. Having been induced, by the solicitation of his fellow-citizens, to become, for one year, a member of the State Legislature, he was willing to go back again to that comfortable retirement from which he had been temporarily drawn, under the full conviction, derived from previous experience, that the cares, responsibilities, and turmoil of political life, were illy calculated to promote his happiness.

All of which is respectfully submitted.

EPHRAIM BATEMAN.

Washington, May 5th, 1828.

No. 7.

Hon. Mr. BERRIEN, *Chairman of the Select Committee, &c.*

I avail myself of the opportunity accorded to me by the Committee, to submit a few brief remarks upon the statement and argument furnished to the Committee by the remonstrants in my case.

I do this under the full sense of the unequal ground I occupy, so far as a knowledge of the law is concerned, in attempting to answer the arguments of lawyers on a question of law, and especially when I reflect, that these remarks are to be submitted to the inspection and judgment of a committee composed of individuals distinguished for their ability and skill in all questions of this sort.

The only countervailing consideration is, (as I believe,) the justness of the cause which it has become my duty to advocate.

It is stated, that pending the election of Senator, and after the two Houses of the Legislature had convened in joint meeting for the pur-

pose, I being Chairman of the joint meeting, retired therefrom on the ground of the delicacy of my situation, but that, subsequently, when it was found that a tie was likely to take place, returned and resumed my seat as presiding officer; and that, when my name was called in order to vote, I requested to be excused—that the vote of excuse being equal, I gave the casting vote, and thereby decided that I should not be excused, contrary to my own request. This statement is adverted to, not because it has any influence on the main question, for I respectfully conceive that it has none; but, for the purpose of putting myself right as to the fact. I therefore unequivocally aver, that when the question of excusing the vote was put, that it was distinctly stated that the decision of it was submitted to my associates of the joint meeting; that I did not vote at all on the question; and that a casting vote in the negative would not have changed the result, and would, therefore, have been an act of useless folly. But, if it had been otherwise, the rules by which the joint meeting was controlled, expressly *prohibited the Chairman from giving* a *casting vote.* See the 15th rule of the copy herewith communicated. The first part of the foregoing statement is admitted. After the joint meeting had become perplexed by fruitless efforts to proceed in the business for which it was convened, at the urgent solicitation of several members I did return as stated.

To prove that the Senate have occasionally looked behind the commission of the Governor, the cases of Mr. Gallatin, and of Messrs. Tracy and Lanman are cited. It was admitted in my answer to the remonstrance, that it would do so, on allegation of constitutional disability, as was the case in regard to Mr. Gallatin, who, it was objected, had not been *nine years* a citizen of the United States. It was not intended to deny the right to the Senate upon any charge of proceeding repugnant to the Constitution of the United States. In the case of vacancies, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments, &c. Messrs. Tracy and Lanman received their commissions, (which were contested,) by virtue of Executive appointments, made *previous* to the expiration of their then existing terms of service, and consequently *before* vacancies had occurred. The constitutional competency of the Executive in these cases to confer the appointments, was fairly involved. It is conceived that these are wholly different from the one before the Committee.

But even this is a subordinate, and not very important question. The controlling question is, does the fact of a member of the Legislature, who is otherwise constitutionally entitled to give his vote in an election for Senator, lose this right upon his becoming himself a candidate for the office? For I apprehend, that if he has a right to vote at all, he must necessarily possess the right of discretion in the bestowment of that vote. This question was argued in the paper already before the Committee, and I cannot think it necessary to go into it again. The right is asserted on the broad ground of the Constitution, and on that pinnacle I take my stand. The labored attempt, therefore, to press into the service the common law, or the lex Parliamentaria, as applicable to *private pecuni-*

ary interest, is confidently believed to be wholly irrelevant—to have no application to the case.

The viva voce manner of election, cannot, of course, affect the principle. If a candidate may not vote for himself in this way, he cannot by ballot; and if the principle contended for, should be recognised as sound, I apprehend there would be difficulty in carrying it into execution. The only effectual way of doing it, perhaps, would be to disfranchise the candidate altogether.

The refined course of reasoning by which it is attempted to take a distinction between a portion of the sovereign people of a State, and an integral part of State sovereignty—to show that the members of the State Legislature, the moment they are metamorphosed into a joint meeting for the purpose of electing a Senator of the United States, lose their connexion with, and their accountability to the people, from which they have directly derived their power, I freely confess to be too metaphysical and attenuated for my comprehension. One of the special trusts confided to the members, is that of the choice of Senators; and I know of no trust conferred, for the exercise of which the people hold these members more strictly responsible. I apprehend that the people never have considered themselves precluded from complaining of the unsatisfactory manner of its execution.

Respectfully, &c.

EPH. BATEMAN.

May 16, 1828.

(No. 8.)

Rules adopted in Joint Meeting, October, 1825.

1. That the election of State Officers, during the present session, be *viva voce*, unless when otherwise ordered; and that all officers be put in nomination the day before their election.

2. That the Chairman attend carefully to the preservation of order and regularity in transacting the business of the Joint Meeting; and that he shall not engage in any debate, or propose his opinion on any question, without leave of the Joint Meeting.

3. That every Member, when he speaks, shall stand up in his place, and address himself to the Chair.

4. That, in all debates and proceedings, the Members observe the strictest decorum: and that if any one use indecent expressions, or utter any personal reflections, or otherwise offend herein, he be censured according to the nature and aggravation of the offence.

5. That no debate ensue, or question be put on a motion, unless it be seconded; when it shall be open to debate, and the same receive a determination by the question, unless it be laid aside by the Joint-Meeting, or a motion be made to amend it, to postpone it, or for the previous question.

6. The previous question shall be in this form:—"Shall the main question be now put?" and until decided shall preclude all amendment and further debate on the main question.

7. If any motion contain more than one simple question, any Member may have it divided into as many parts as there are distinct questions, if seconded in his motion.

8. That no Member speak more than twice on the same subject, in the same debate, without leave of the Joint Meeting.

9. That all questions of order be determined by the Chairman, subject to an appeal to the Joint Meeting, when demanded by four Members.

10. That when two or more Members rise to speak nearly at the same time, the Chairman shall decide who shall speak first.

11. When any question is stated, and by the Joint Meeting agreed to be put, no Member shall be at liberty to withhold his vote, without the leave of the Joint Meeting.

12. That the names of the Members voting, and for whom they have voted, shall be entered on the minutes, if moved for and seconded.

13. That the Joint Meeting may adjourn when the list of nominations is not gone through with.

14. That appointments or re-appointments may be made without resignations, or the commissions being expired, if the commissions of the persons in office shall expire the same sitting, or within the time in which another Joint Meeting shall be held: *Provided*, that where a new appointment is made, the person so appointed shall not be considered as in commission until the expiration of the commission of the former person, whose place it is to supply.

15. That in all questions, the Chairman of the Joint Meeting be called upon to vote in his turn, as one of the Representatives in Council or Assembly, but that he have no casting vote as Chairman.